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OLC 78-0200
31 January 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Federal Tort Claims Act

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1. ☐ In early January, I met with ☐ both of OGC. They were concerned about a possible impact of the revisions of the Federal Tort Claims Act (S. 2117) on the Agency's ability to protect the identify of employees involved in civil suits.

2. ☐ Currently, the Government does not assume liability for torts committed by employees overseas. In cases involving its employees, the Agency files a memorandum which argues the need for secrecy as a reason for not disclosing the employee's identity. To date, federal district courts have agreed. OGC was concerned that the aggrieved party could argue that, because under the revision the Federal Government still would not assume liability for torts committed overseas, Congress intended that the individual be liable for overseas torts, else it would have provided that the Federal Government be liable. The result, feared by OGC, could be that the Agency's Secrecy Agreement would be rebutted by this argument of implied Congressional intent.

3. ☐ On 25 January 1978, I discussed this with Irving Jaffe, Deputy Assistant Attorney General, Civil Division. He said that the Department of Justice was going to amend the proposed legislation to include constitutional torts committed overseas within the scope of the Act. This is the type category of torts for which the suits involving the Agency have brought. He added that, if a situation arose which still presented problems of disclosure of an employee's identity, the Government could possibly assume liability and require the plaintiff merely to prove damages.

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4. (IUO) [   ] who handles the litigation in this area stated later that day that this amendment would solve his problem.

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